

Arizona Corporation Commission

HB 2111

Corporation and LLC omnibus

Background:

Within the Arizona Corporation Commission (ACC), the Corporations Division (Division) grants corporate or limited liability company (LLC) status to businesses organizing in Arizona, issues licenses to foreign corporations and LLCs doing business in Arizona, and maintains corporate and LLC filings and corporate annual reports.

The ACC and the Division continue to work to improve the efficiency and effectiveness of the services it provides to the state's business community. As part of its continued efforts to improve corporation and LLC laws, the ACC, with input from customer stakeholders, has compiled a number of statutory changes.

Proposed Changes:

Update corporation and LLC fee statutes to clarify that filing fees are nonrefundable and do not have to be refunded if the ACC rejects the document for filing.

A.R.S § 29-851 requires the ACC to collect and deposit a \$50.00 fee when initial Articles of Organization are delivered to the ACC for filing. In 2003, the Arizona Superior Court ruled that rejected documents are never "filed" with the ACC, therefore the "filing fee" should be returned to the customer. Processing refunds involves considerable Division staff resources. Additionally, the Division feels that a nonrefundable fee is necessary to help defray the administrative cost of review and processing the documents.

Allow Articles of Merger for LLC's to include amendments to the articles of the surviving entity.

A.R.S. §10-1105 allows corporations to include amendments to the articles of the surviving entity when submitting Articles of Merger to the ACC. The LLC statutes do not currently provide for the inclusion of amendments to the articles of the surviving entity.

Ensure that the ACC can accept electronic images as official filings and clarify how the documents will be processed.

A.R.S. §10-120 allows the ACC to accept faxed documents as official public records; however, a statutory change is needed to ensure that the ACC is allowed to accept electronic images as an official filings and to clarify how the documents will be processed. This change will be important in order to implement future e-filing options.

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Add express authority to allow the ACC to issue Certificates of Good Standing for LLC's.

A.R.S. §10-128 allows a person to apply to the ACC for a Certificate of Good Standing; however, this specific allowance is not currently included in LLC statutes.

Conform LLC dissolution statutes to corporation statutes.

A.R.S. §10-1405 requires corporations to liquidate its business and affairs including, distributing its remaining property among its shareholders. This provision is not included in LLC statutes and would make clear that liabilities to creditors must be paid before distributions are made to members.

Clarify that the time clock for publication begins on the date the documents are approved.

The Division's current practice is to start the time clock for publication on the date the documents are approved. The ACC should make this practice clear in statute. This issue arose from a lawsuit filed against the ACC.

PLEASE SUPPORT HB 2111.